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Attorney for Defendant
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
The Honorable MARY K. DIMKE

United States of America,

Plaintiff,

v.

Miguel Urbina,

Defendant.

Case No. 1:20-CR-2049-MKD

**Defendant's Objections to
Draft PSR**

Yakima - With Oral Argument
July 11, 2023 @ 9:00 a.m.

The defendant, Miguel Urbina, through counsel, respectfully files the objections below to the draft PSR issued to the parties on June 5, 2023.

Objections

Pg. 4, ¶6, bullet point 4: The government does not agree to make the additional 1-level reduction.

1 **Pg. 9, ¶38:** The report indicates that according to Ms. Wood, Mr. Urbina
2 and Ms. Wood were allowed to use Ms. Wood's desktop computer. According
3 to Mr. Urbina, he was not allowed to use that computer.

4 **Pg. 12, ¶55:** Under the USSG §2G2.1, Application Note 1, the definition
5 of "Distribution means any act, including possession with intent to distribute,
6 production, transmission, advertisement, and transportation, related to the
7 transfer of material involving sexual exploitation of a minor. Accordingly,
8 distribution includes posting material involving the sexual exploitation of a
9 minor on a website for public viewing but does not include the mere solicitation
10 of such material by a defendant.
11

12 This definition does not appear to be applicable to Mr. Urbina's case. In
13 Count 1, Mr. Urbina and his girlfriend filmed their consensual sexual
14 relationship. There does not appear to be any evidence of distribution.
15 Therefore the 2-level increase pursuant to USSG §2G2.1(b)(3) should not apply.
16 Mr. Urbina respectfully objects.
17

18 **Pg. 12, ¶57:** According to USSG §2G2.1(6)(B)(ii), you add a two-level
19 increase, "If, for the purpose of producing sexually explicit material or for the
20 purpose of transmitting such material live, the offense involved...(B) the use
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1 of a computer or an interactive computer service to...(ii) solicit participation
2 with a minor in sexually explicit conduct...”

3 This does not appear to apply to Mr. Urbina’s case. Mr. Urbina did not
4 appear to use a computer or an interactive computer service to solicit
5 participation with a minor in sexually explicit conduct. Count 1, charges Mr.
6 Urbina and his girlfriend with filming their consensual sexual relationship.
7 There 8-year relationship appears to have begun in-person and they appear to
8 have decided to film their consensual sexual relationship mutually and in
9 person. Therefore, this 2-level increase does appear to be applicable to Mr.
10 Urbina’s case. Mr. Urbina respectfully objects.
11

12 **Pg. 12, Adjusted Offense Level (Subtotal):** Based on the above objections
13 it appears that the adjusted offense level (subtotal) should be 34 (instead of
14 38). Mr. Urbina respectfully objects.
15

16 **Pg. 13, ¶64:** According to USSG § 2G2.2(b)(3)(F), “If the defendant
17 knowingly engaged in distribution, other than distribution described in
18 subdivisions (A) through (E), increase by 2 levels. Based on the record,
19 subdivision (A) through (E) do not apply to Mr. Urbina. As to (F), the
20 Application Notes 1, indicate that “Distribution means any act, including
21 possession with intent to distribute, production, transmission, advertisement,
22

1 and transportation, related to the transfer of material involving the sexual
2 exploitation of a minor. Accordingly, distribution includes posting material
3 involving the sexual exploitation of a minor on a website for public viewing but
4 does not include the mere solicitation of such material by a defendant.” This
5 does not appear to apply to the set of facts in Count 2, in which Mr. Urbina,
6 downloaded and possessed child pornography but did not have intent to
7 distribute or post the child pornography.
8

9 Application Note 2 indicates that for purposes of (b)(3)(F), the defendant
10 “knowingly engaged in distribution” if he (A) knowingly committed the
11 distribution, (B) aided, abetted, counseled, commanded, induced, procured, or
12 willfully caused the distribution, or (C) conspired to distribute. This does not
13 appear to apply to Mr. Urbina. The idea of distribution appears to encompass
14 the idea that the defendant in some form shared the child pornography to rise
15 to the level of distribution. Mr. Urbina respectfully objects.
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17 **Pg. 13, ¶67 – correction only:** Counsel’s recollection is that the cp was
18 found on Mr. Urbina’s computer/hard drive and not found on a cell phone.
19

20 **Pg. 13, ¶71:** Based on the above objection it appears that the correct
21 Adjusted Offense Level (Subtotal) should be 31 (instead of 33). Mr. Urbina
22 respectfully objects.
23

1 **Pg. 13, ¶74:** For the reasons stated above, the two-level increase for
2 distribution does not appear to apply to Mr. Urbina's case. Mr. Urbina
3 respectfully objects.

4 **Pg. 13, ¶75:** For the reasons stated above, the two-level increase for use
5 of a computer to solicit participation with a minor to engage in sexually explicit
6 conduct for the purpose of producing sexually explicit material does not appear
7 to apply to Mr. Urbina's case. Mr. Urbina respectfully objects.

8 **Pg. 14, ¶79:** Based on the objections made above the correct Adjusted
9 Offense Level (Subtotal) appears to be 36 (instead of 40). Mr. Urbina
10 respectfully objects.

11 **Pg. 14, ¶¶81, 83:** Based on the objections above, it appears that the
12 correct Combined Adjusted Offense level is 39 (instead of 43). Mr. Urbina
13 respectfully objects.

14 **Pg. 14, ¶84:** According to USSG §4B1.5(b)(1) there is a 5-level increase
15 where "the defendant's instant offense of conviction is a covered sex
16 crime....and the defendant engaged in a pattern of activity involving
17 prohibited sexual conduct..." According to Application Note 2, Covered Sex
18 Crime as Instant Offense of Conviction, "For purposes of this guideline, the
19 instant offense of conviction must be a covered sex crime, *i.e.*: (A) an offense
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1 perpetrated against a minor, under (i) chapter 109A of title 18, United States
2 Code; (ii) chapter 110 of such title, not including trafficking in, receipt of, or
3 possession of, child pornography, or a recordkeeping offense; (iii) chapter 117
4 of such title, not including transmitting information about a minor or filing a
5 factual statement about an alien individual; or (iv) 18 U.S.C. § 1591; or (B) an
6 attempt or a conspiracy to commit any offense described in subdivisions (A)(i)
7 through (iv) of this note.” Mr. Urbina’s offense of conviction does not appear
8 to meet the above definition for covered sex crime. Mr. Urbina respectfully
9 objects.
10

11 **Pg. 15, ¶86:** The prosecutor did not agree to an additional 1-level
12 decrease for acceptance of responsibility.
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14 **Pg. 15, ¶87:** Based on the above objections, the correct Total Offense
15 Level appears to be 37 (instead of 43).
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17 **Pgs. 15-16, 88-96:** Mr. Urbina objects to the inclusion of these
18 paragraphs in the PSR. First, addressing Ms. Wood’s allegation of physical
19 abuse and that she was forced by Mr. Urbina to participate in the upskirting
20 conduct. While Ms. Wood makes statements to support this idea the objective
21 evidence does not support such a finding. The defense team attempted to
22 conduct a complete review of the government’s evidence found on Mr. Urbina’s
23

1 hard-drive in relation to the upskirting evidence conducted with Ms. Wood. At
2 no point did the defense team observe Ms. Wood show any signs of distress
3 (such as crying in the bathroom). Instead the evidence reviewed by the defense
4 showed the opposite. Ms. Wood appeared to be a knowing, willing, and active
5 participant in the upskirting videos. As charged by the government, Ms. Wood
6 was the principal and Mr. Urbina aided and abetted her conduct.
7

8 Turning to the allegations of sexual assault/rape, Mr. Urbina is
9 presumed innocent of this conduct. While the allegations are serious, they are
10 only allegations at this point. The local police appear to have conducted a
11 thorough investigation which have not resulted in charges.
12

13 Pg. 25, ¶178: Based on the above objections the total offense level should
14 be 37 with a criminal history category of II resulting in an advisory guideline
15 range of 235-293. Mr. Urbina respectfully objects.

16 Pg. 27, ¶201: Mr. Urbina should be considered indigent.

17 Pg. 29, ¶211: Based on the above objections, the total offense level should
18 be 37 with a criminal history category of II resulting in an advisory guideline
19 range of 235-293. Mr. Urbina respectfully objects.
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Dated: June 20, 2023.

By s/ Craig D. Webster
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CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Michael D. Murphy, Assistant United States Attorney.

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s/ Craig D. Webster
Craig D. Webster